



## MASTER SERVICE AGREEMENT

This Master Service Agreement (“MSA”) sets forth the terms and conditions under which AGILITY MANAGED SERVICES INC., d/b/a AGILITY TECHNOLOGIES (further known as “AGILITY”) an Illinois Corporation, shall provide Products and Services to \_\_\_\_\_ (“Client”). Client’s execution of this MSA constitutes acceptance of the terms and conditions stated herein.

The parties agree as follows:

### 1. SERVICE ATTACHMENTS

The services to be delivered by AGILITY and the fees for those services are described in one or more Service Attachments to this MSA. The services to be provided under the Service Attachments are the “Services.” The Service Attachments identify the terms and conditions applicable to Services, as opposed to those generally applicable to all Services. Except for Supplemental Services, and unless otherwise agreed in writing, the services to be delivered by AGILITY to Client are limited to those Services specifically described in the Service Attachments. In the event of any conflict between the terms of a Service Attachment and the terms of this MSA, the terms in the Service Attachment control.

### 1. AGREEMENT TERM

This MSA commences on the MSA Effective Date and will remain in effect until either party terminates it as permitted herein. Either party may terminate this MSA for any reason upon at least thirty (30) days advance written notice, written notice given to the other party. However, termination of this MSA will not, by itself, result in the termination of any Service Attachments, and this MSA will remain in effect notwithstanding any notice of termination unless and until a Service Attachment is terminated or expires according to their terms.

### 2. FEES AND PAYMENTS

During the term of this agreement, on each item of equipment, service, and circuits covered hereby, Client shall pay the charges specified in the associated Service Attachment.

All charges and fees to be paid by Client under this MSA are exclusive of any applicable sales, use, excise or services taxes that may be assessed on the provision of the Services. Client is responsible for the payment of any and all such taxes.

Client shall pay the full amount reflected on any invoice as owed to AGILITY within thirty (30) days of the date of that invoice (the “Payment Deadline”). Client shall pay a late charge of one and one half percent (1.5%) per month or the maximum lawful rate, whichever is less, for all invoiced amounts not paid by the Payment Deadline. If Client disputes in good faith all or any portion of the amount due on any invoice, or if Client otherwise requires any adjustment to an invoiced amount, Client must notify AGILITY of the nature and basis of the dispute and/or adjustment in writing prior to the Payment Deadline. The parties shall use their reasonable best efforts to resolve the dispute prior to the Payment Deadline. However, if the parties are unable to resolve the dispute prior to the Payment Deadline, Client nevertheless shall pay the entire invoiced amount to AGILITY by the Payment Deadline. If it is ultimately determined that the disputed amount should not have been paid by Client to AGILITY, AGILITY shall apply a credit equal to that amount on Client’s next invoice.

If Client fails to pay all amounts owed to AGILITY under this MSA when due, then upon at least ten (10) days prior, written notice to Client, and in addition to any other remedies available at law or in equity, AGILITY may suspend Services under this MSA until full payment is made. Following any suspension of service under this provision, and after Client makes full payment to AGILITY, AGILITY shall restore the services after validating that all components to be monitored and/or managed under any applicable Service Attachment comply with AGILITY’s level of security, updates and best practices. AGILITY’s right to suspend Services under this section is in addition to AGILITY’s right to terminate any Service Attachment for non-payment.

### 3. AGILITY BUSINESS HOURS

AGILITY’s Normal Business Hours are from 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday “Weekdays”.

AGILITY’s After Business Hours are from 5:00 p.m. to 7:59 a.m. Central Time, Monday through Thursday, and from 5:00 p.m. Central Time on Fridays to 7:59 a.m. on Mondays “Weekends”.

### 4. AGILITY RECOGNIZED HOLIDAYS

AGILITY is closed on the following AGILITY-recognized holidays:

- New Year’s Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Black Friday Day
- Christmas Eve
- Christmas Day

### 5. RIGHTS TO CLIENT WORKS

Any original work, regardless of medium, that AGILITY delivers to Client and that does not consist of modifications to an existing AGILITY Work (as defined below) is a “Client Work,” is to be deemed a “workmade for hire” under U.S. law, and is the sole, exclusive property of Client, except for the following items, which do not constitute Client Works:

- Software, including but not limited to any proprietary code, source code and object code, that is subject to third-party license agreements;
- Those portions of any deliverable consisting of information in the public domain;
- Those portions of any deliverable consisting of generic ideas, concepts, business know-how and



work processes, and techniques within the computer design, support and consulting business generally; and

- Those portions of any deliverable consisting of general computer consulting knowledge and information AGILITY had or acquired during the performance of its Service for Client, not including any proprietary business information of Client, conveyed to AGILITY by Client.

To the extent any Client Work may be deemed not to be a “work made for hire” under applicable law, AGILITY hereby irrevocably assigns and conveys to Client all of its copyright in that Client Work. AGILITY further hereby irrevocably assigns to Client all of its patent, copyright, trade secret, know-how and other proprietary and associated rights in any Client Work.

Client hereby grants AGILITY a limited, non-exclusive, revocable, royalty-free license to use any Client Works for AGILITY’s internal business purposes during the term of this MSA.

## 6. RIGHTS TO AGILITY WORKS

Any writing or work of authorship, regardless of medium, created or developed by AGILITY or Client in the course of performance under this Agreement and related to existing works owned by AGILITY is an “AGILITY Work,” is not to be deemed a “work made for hire,” and is and will remain the sole, exclusive property of AGILITY. To the extent any AGILITY Work for any reason is determined not to be owned by AGILITY, Client hereby irrevocably assigns and conveys to AGILITY all of its copyright in such AGILITY Work. Client further hereby irrevocably assigns to AGILITY all of its patent, copyright, trade secret, know-how and other proprietary and associated rights in any AGILITY Work.

AGILITY hereby grants Client a limited, non-exclusive, revocable, royalty-free license to use any AGILITY Works for Client’s internal business purposes only during the term of this MSA.

## 7. CLIENT EQUIPMENT

“Equipment” means any data-communications, network-security, or other information-technology product or device.

In the event that AGILITY facilitates the return of Client-owned Equipment on Client’s behalf:

- Client shall provide a designated contact to assist in unpacking and installing the replacement Equipment.
- Client shall follow the instructions provided by the AGILITY Support Agent via phone or in writing.
- Client shall represent and warrant that any exchanged Equipment provided to AGILITY is owned by the Client or AGILITY and is free from any outstanding liens, security interests or other encumbrances. Client shall agree to hold AGILITY harmless from any claim asserted against AGILITY or against the Equipment accepted by AGILITY when that claim is based upon a violation of this warranty.
- The return of failed Equipment will be at Client’s expense and must occur within five (5) working days of the receipt of the advance replacement.
- AGILITY will not accept any return of defective

Equipment unless a Return Authorization (RA) number has been issued.

- Client is responsible for keeping any shipment containers, boxes, packing materials that may be needed to properly protect and return Equipment to AGILITY as needed.
- Client may be charged for packing materials.
- Client shall be charged for Equipment damaged due to inadequate packaging at the manufacturer’s current list price.
- Client shall ensure Products are returned with delivery signature confirmation.
- Client shall be responsible for returned Products until received, inspected, and accepted by AGILITY.
- Client shall be charged for lost Equipment at the manufacturer’s current list price.

## 8. AGILITY EQUIPMENT

“AGILITY Equipment” means any computer Equipment delivered by AGILITY and used at Client’s location to facilitate the delivery of Services to Client.

AGILITY is and will remain the sole owner of any AGILITY Equipment provided by AGILITY. AGILITY Equipment is provided by AGILITY to Client on a rental basis only, and this MSA transfers to Client no AGILITY Equipment ownership rights of any kind.

AGILITY has and will retain sole discretion to determine the appropriate AGILITY Equipment and associated software, if any, to be used at Client’s location, provided that AGILITY’s determination does not materially impair the availability or delivery of services under this MSA. AGILITY also has and will retain sole discretion to determine the necessity of maintenance, repairs and/or improvement of the AGILITY Equipment.

AGILITY makes no independent representations or warranties with respect to the AGILITY Equipment. Any third-party warranties are the exclusive remedies of Client with respect to such AGILITY Equipment. In the event of an AGILITY Equipment malfunction, AGILITY will take commercially reasonable steps to ensure that Client receives the benefit of any manufacturer warranties applicable to the AGILITY Equipment in use at Client’s location.

Client shall take reasonable care of the AGILITY Equipment and shall not damage it, tamper with it, move or remove it, attempt to repair it, or attempt to install any software on it. Client is responsible for all damage to or loss of the AGILITY Equipment used at Client’s location, other than loss or damage caused by AGILITY’s employees or contractors. In addition, Client shall obtain and maintain insurance with a reputable insurer for the full replacement value of the AGILITY Equipment. Such policy or policies of insurance must cover the AGILITY Equipment against loss or damage (including, without limitation, accidental loss or damage) and must name AGILITY as an insured beneficiary with respect to the AGILITY Equipment. Upon demand by AGILITY, Client shall produce evidence to AGILITY that such insurance is being maintained and is valid.

Client is responsible for providing the necessary power,



network connection and appropriate environment to support the AGILITY Equipment.

Client shall not remove any sign, label or other marking on the AGILITY Equipment identifying AGILITY as the owner of the AGILITY Equipment. Client does not acquire and will not acquire any rights of ownership in the AGILITY Equipment by virtue of this MSA, and Client does not have and will not have, by operation of law or otherwise, any lien or other similar right over or in relation to the AGILITY Equipment or any equipment at AGILITY's data centers.

On termination of any Service Attachment pursuant to which AGILITY delivers AGILITY Equipment to Client, Client shall allow AGILITY and its employees and contractors reasonable access to Client's premises to remove the AGILITY Equipment.

## 9. AGILITY SOFTWARE

"AGILITY Software" means all and any software, firmware, equipment instructions or software scripts installed or otherwise deployed on the AGILITY Equipment or provided by AGILITY to Client for installation on Client's computer equipment.

This MSA does not transfer any right, title, or interest in the AGILITY Software to Client. Client's use of the AGILITY Software is subject to all applicable terms of any end-user license agreement pertaining to the AGILITY Software, a copy of which will be made available to Client upon request.

Client shall not, and shall not permit any third party, to:

- Distribute or allow others to distribute copies of the AGILITY Software or any part thereof to any third party,
- Tamper with, remove, reproduce, modify or copy the AGILITY Software or any part thereof,
- Provide, rent, sell, lease or otherwise transfer the AGILITY Software or any copy or part thereof or use it for the benefit of a third party, or
- Reverse assemble, reverse compile or reverse engineer the AGILITY Software or any part thereof, or otherwise attempt to discover any AGILITY Software source code or underlying proprietary information except as may be permitted by law.

## 10. NON-DISCLOSURE AND CONFIDENTIALITY

Each party and its employees or agents may be exposed to or may acquire information that is proprietary or confidential to the other party. Each party shall hold such "Confidential Information" in strict confidence and shall not disclose any such information to any third party. Confidential Information includes but is not limited to: (a) any AGILITY technical information, design, process, procedure, formula, or improvement, as well as any formulae, specifications, designs, business or work processes and procedures, instructions, and other data relating to the development, production of any work done specifically for the Client; (b) any business plans or financial information of the other party; and (c) any information labeled as "confidential," all regardless of whether such information would be protected under the common law.

Notwithstanding the preceding provision, Confidential Information does not include:

- Information that at the time of disclosure is, without fault of the recipient, available to the public by publication or otherwise;
- Information that either party can show was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the other;
- Information received from a third party with the right to transmit same without violation of any secrecy agreement with the other party; and
- Information that must be disclosed pursuant to court order or bylaw.

## 11. NON-SOLICITATION OF EMPLOYEES

Client and AGILITY each shall not, during the term of this Agreement and for a period of two (2) years following termination of this Agreement solicit the employment of, employ or contract with AGILITY personnel or Client personnel, as applicable, with whom Client or AGILITY has had contact under this Agreement. If Client or AGILITY breaches this paragraph, Client or AGILITY as applicable shall pay as liquidated damages, and not as a penalty, the sum equal to one hundred percent (100%) of the employee's annual salary. If AGILITY or Client waives this restriction, Client or AGILITY as applicable, shall reimburse AGILITY's or Client's mutually agreed upon costs of external recruitment, training and lost revenues.

## 12. WARRANTIES AND LIMITATIONS

### 12.1 WARRANTIES

Primary Services are warranted to the extent set forth in the applicable Service Attachment.

With respect to Supplemental Services and Project Services, AGILITY warrants that the Services will be performed in a professional and workmanlike manner and in accordance with any written agreement between the parties. All such Services will be deemed to have been accepted by the Client and to be conforming unless Client notifies AGILITY in writing within ten (10) business days following completion that the Services do not conform to this warranty.

AGILITY does not independently warrant any Third-Party Products and Services, however AGILITY will, as set forth in Section 16, assist the Client in obtaining the benefit of any warranties and remedies that might be available from the third-party vendor or service provider.

**EXCEPT FOR THE EXPRESS WARRANTY STATED ABOVE, AGILITY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

### 12.2 Limitations of Remedies

FOR ANY BREACH OF THE WARRANTIES MADE BY AGILITY OR CLAIM OF DEFECT IN THE SERVICES (OTHER THAN THE THIRD-PARTY PRODUCTS AND SERVICES), CLIENT'S EXCLUSIVE REMEDY AND AGILITY ENTIRE LIABILITY SHALL BE THE CORRECTION BY AGILITY OF THE DEFICIENT SERVICES, OR, IF AGILITY CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY WITHIN A REASONABLE TIME, THEN CLIENT MAY TERMINATE THE APPLICABLE SERVICE CONTRACT AND



AGILITY WILL REFUND TO CLIENT THE FEES FOR THE AFFECTED SERVICES, OR PORTION THEREOF, THAT WERE NOT PROPERLY PERFORMED, TOGETHER WITH ANY FEES PRE-PAID ON ACCOUNT OF ANY PORTION OF THE AFFECTED SERVICES NOT YET PERFORMED.

AGILITY SHALL HAVE NO LIABILITY WITH RESPECT TO ANY BREACH OF WARRANTY OR CLAIM OF DEFECT IN ANY THIRD-PARTY PRODUCTS OR SERVICES AND CLIENT SHALL LOOK EXCLUSIVELY TO SUCH REMEDIES AS MIGHT BE MADE AVAILABLE BY THE THIRD-PARTY VENDOR OR SERVICE PROVIDER.

### 12.3 Disclaimers

EXCEPT AS SET FORTH IN SECTION 12.1 OR OTHERWISE EXPRESSLY AGREED IN WRITING OR DEFINED ELSEWHERE WITHIN THIS MASTER SERVICE AGREEMENT OR SERVICE ATTACHMENT, THE SERVICES, INCLUDING ANY THIRD-PARTY PRODUCTS AND SERVICES, ARE PROVIDED ON AN "AS IS" BASIS AND ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SAME, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM AND USAGE, PRIOR PRACTICE, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY OVERRIDDEN, EXCLUDED, AND DISCLAIMED. WITHOUT LIMITING THE FOREGOING, IT IS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, THAT THE SERVICES WILL MEET ANY CLIENT'S PARTICULAR REQUIREMENTS OR EXPECTATIONS, OR THAT THE SERVICES WILL BE COMPLETELY SECURE. THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN LAPSES IN THE AVAILABILITY OR SECURITY OF THE SERVICES.

### 13. INDEMNIFICATION

Client shall indemnify and hold AGILITY harmless against and from any and all causes of action, damages and other liabilities and expenses of any kind whatsoever (including, without limitation, reasonable attorney's fees) that might be incurred by AGILITY in connection with a claim by a third party related to any of the following:

- Client's use of the Services in violation of an applicable AUP or illegal or improper use of the Services by Client as described in this MSA;
- Client's failure to ensure that any software or other technology that is in use by Client, or that is to be furnished by Client, and that Client has requested AGILITY to use, access or modify as part of the Services, is duly licensed as set forth within this MSA;
- Client's violation of the rights of a third-party vendor or service provider as described within this MSA;
- Client's transmission to AGILITY, or use of the Services to process, data that is subject to regulation under the GDPR or similar data protection requirements without first providing notice to AGILITY and obtaining AGILITY's written agreement to the processing of such data, in violation of the requirements within this MSA; or
- Client's use of the Services for any High-Risk Use as defined within this MSA

Client shall also defend, indemnify and hold AGILITY harmless against any and all costs and expenses, including reasonable attorney's fees, associated with the defense or settlement of any claim that:

- AGILITY's use, access or modifications of any software that Client has requested AGILITY use, access or modify as part of the Services infringes any patent, copyright, trademark, trade secret or other intellectual property right, or
- Client's use of any Services in violation of any provisions of, or Client representations in, the Service Attachments under which AGILITY provides such Services to Client violates any law or infringes any patent, copyright, trademark, trade secret or other intellectual property right.

Client further shall pay any judgments or settlements based on any such claims.

### 14. LIMITATIONS OF LIABILITY

#### 14.1 General Limitation

EXCEPT AS OTHERWISE SPECIFICALLY AGREED IN WRITING, AGILITY'S LIABILITY IN CONNECTION WITH ANY CLAIM RELATED TO A SERVICE CONTRACT, WHETHER IN CONTRACT, OR OTHERWISE, SHALL BE LIMITED TO ANY ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT AND WILL NOT EXCEED THE GREATER OF (1) \$2,500, OR (2) THE FEES ACTUALLY PAID BY CLIENT TO AGILITY IN CONNECTION WITH THE SERVICE CONTRACT DURING THE MONTH'S PERIOD IMMEDIATELY PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM. THE SAME LIMITATION SHALL APPLY TO ANY CLAIM RELATED TO SUPPLEMENTAL SERVICES OR ANY OTHER PROVISION OF SERVICES BY AGILITY OUTSIDE THE CONTEXT OF A SERVICE CONTRACT (IN WHICH CASE THE LIMITATION IN CLAUSE (2) SHALL BE TO THE FEES ACTUALLY PAID BY THE CLIENT TO AGILITY IN CONNECTION WITH THE WORK OR PROJECT IN QUESTION DURING THE PRECEDING MONTH).

#### 14.2 Products and Services from Other Sources

AGILITY SHALL NOT BE LIABLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CONTENT, MODIFICATIONS, OR PRODUCTS AND SERVICES OBTAINED BY THE CLIENT OTHER THAN THROUGH AGILITY. WITHOUT LIMITING THE FOREGOING, AGILITY SHALL NOT BE LIABLE FOR ANY KIND OF UNAUTHORIZED ACCESS OR OTHER HARM THAT MAY BE CAUSED BY CLIENT'S ACCESS TO WEBSITES OR USE OF APPLICATION PROGRAMMING INTERFACES OR OTHER COMPUTER CODE AVAILABLE FROM OUTSIDE SOURCES, INCLUDING WITHOUT LIMITATION HARM RESULTING FROM THE EXECUTION OR TRANSMISSION OF MALICIOUS CODE OR SIMILAR OCCURRENCES, SUCH AS DISABLING DEVICES, DROP DEAD DEVICES, TIME BOMBS, LOGIC BOMBS, TRAP DOORS, TROJAN HORSES, WORMS, VIRUSES, HACKERS, PHISHERS, CRYPTO-LOCKERS, RANSOMWARE, AND SIMILAR MECHANISMS.

## 15. FORCE MAJEURE

Neither Party shall be liable for any delay or failure in delivery or performance, other than the payment of money, due to causes beyond its reasonable control, which causes shall include, without limitation, acts of God, acts of civil or military authorities, fire, strikes, power surges, power outages, epidemics, quarantine restrictions, flood, natural disasters, riot, war, delays in transportation or inability to obtain necessary labor, materials or supplies not caused by a Party, or widespread and prolonged loss of use of the Internet. In the event of any delay, the set date(s) of delivery and performance, if any, shall be extended for a reasonable period.

## 16. THIRD-PARTY PRODUCTS AND SERVICES

Client acknowledges that the Third Party Products and Services are made available on the terms and conditions set forth in the Third-Party Agreements (copies of which are published online at <https://aqcomtech.com/legal/tpa>), including without limitation any applicable end user license agreement, retail customer terms and/or AUP, and Client agrees to use Third-Party Products and Services in accordance with such terms and conditions.

## 17. THIRD-PARTY WARRANTY AND REMEDIES

AGILITY does not warrant the quality, performance or any other aspect of the Third-Party Products and Services. In the event of a defect or difficulty in the use of the Third-Party Products and Services, Client shall look solely to the warranty or remedies (if any) provided for in the applicable Third-Party Agreements and in this regard AGILITY agrees to provide the Client with commercially reasonable assistance in obtaining the benefit of any warranty or remedies offered by the third-party vendor or service provider. If AGILITY is party to a wholesale, reseller or other agreement with the third-party vendor or service provider, then AGILITY will similarly make commercially reasonable efforts to obtain efforts to obtain for Client the benefit of any warranty or remedies provided for thereunder. The provisions of this section shall not be interpreted to require AGILITY to bring lawsuit, commence arbitration proceedings or take any similar action against a third-party vendor or service provider; nor to require AGILITY to provide Client with any remedy greater in amount or extent than any remedy actually provided to AGILITY by the third-party vendor or service provider.

## 18. RIGHTS OF THIRD-PARTY VENDORS AND SERVICE PROVIDERS

Use of the Third-Party Products and Services shall at all times be in accordance with the rights of the third-party vendors and service providers and in this regard Client represents and warrants that it will not:

- Engage in unauthorized use, copying or distribution of the Third Party Products and Services in violation of licensing restrictions; disable or seek to disable any security, copy protection or similar features; or damage or fail to return hardware, equipment or other tangible items upon the completion of a Service Contract;
- Translate, modify, adapt, decompile, disassemble, create derivative works from, merge with other products or services, or reverse engineer the Third-Party Products and Services; or
- Use any confidential or proprietary information provided with or as a part of the Third-Party Products and Services for any purpose other than

facilitating Client's use of the Third-Party Products and Services in accordance with the terms of a Service Contract; or fail to cooperate in the return, deletion and/or destruction of any such information upon the completion of a Service Contract.

## 19. CLIENTS COVENANTS AND OBLIGATIONS

### 19.1 Limitations on Scope of Support

Except to the extent, if any, provided for in the applicable Order, support (including without limitation provisioning) for the products and services of third-party vendors and service providers is not included in the scope of the Services provided by AGILITY unless client has entered into a Service Contract for Primary Services, that covers the products and services in question. If Client wishes to obtain support for products or services of a third-party vendor or service provider that do not satisfy this criteria, then such support may be included in a Service Contract for an additional fee or requested as either Supplemental Services or Project Services.

### 19.2 Software Licensing

Client represents and warrants that Client has proper licenses for (or otherwise has the right to use) any software or other technology that is in use by Client, or that is to be furnished by Client, and that Client has requested AGILITY to use, access or modify as part of the Services.

It is the Client's responsibility to independently ensure that ALL such software and technology is properly licensed, and Client agrees to provide AGILITY with proof of such licensing upon request. AGILITY will not promote the use of, or knowingly support, software or other technology that is not properly licensed by Client. Assistance with software audits or licensing compliance matters may be obtained from AGILITY as Project Services.

### 19.3 Remote Access; Client Facilities

Broadband Internet access must be provided and AGILITY must be provided with remote access (via VPN, remote monitoring and management (RMM) tool or other reasonable means) to covered equipment. Client acknowledges that AGILITY may require unattended remote access to Client systems. Appropriate cabling to all covered computers and devices must be provided. Appropriate air conditioning and ventilation for all covered computers and devices must be provided in order to maintain temperature and air quality as specified by the applicable hardware manufacturers. Power surge protection must be provided for all covered computers and devices.

### 19.4 Existing Service Providers; Disposal of Old Equipment and Packaging

Unless otherwise agreed in writing, Client is responsible for arranging for the disconnection or termination of any existing services, for arranging for any migration, porting or other transition services required, and for the payment of any charges related to the foregoing to Client's existing service provider(s). AGILITY is not responsible for the acts or omissions of any other service providers, utility companies or other third parties. Client is responsible for the disposition or disposal of any old or unused hardware, racking, cabling or other items and for the disposal of any shipping or packaging materials associated with new items.

**19.5 Network Security and Malicious Events**

In performing the Services, AGILITY shall utilize cyber-security practices and technology that are in accordance with industry standards as of the date of performance. Unless specifically agreed in a Service Contract for the provision of cyber-security consulting services, AGILITY is not undertaking a duty to update the Client's existing network, systems or environment or any previously- performed Services or to provide any advice, monitoring or other services related to cyber-security services, and AGILITY shall not be responsible for the security of your computer network, voice circuits or other systems, or any other aspect of your environment nor shall AGILITY be liable for any damages resulting from a Cyber-Attack, as defined below (except to the extent, if any, that the Cyber-Attack is attributable to a breach of the obligation set forth in the first sentence of this section, in which case AGILITY liability shall be limited in accordance with the general limitation of liability set forth in Section 13.1). WITHOUT LIMITING THE FOREGOING, AGILITY SHALL HAVE NO LIABILITY FOR DAMAGES RELATED TO SECURITY DEFECTS IN COMMERCIALY-AVAILABLE SOFTWARE, HARDWARE OR OTHER PRODUCTS AND SERVICES THAT ARE SUBSEQUENTLY FOUND TO EXIST (REGARDLESS OF WHETHER THE PRODUCTS AND SERVICES IN QUESTION ARE RELATED TO CYBER-SECURITY OR ARE USED FOR INFORMATION TECHNOLOGY MANAGEMENT, BUSINESS PRODUCTIVITY OR OTHER PURPOSES).

**19.6 Theft of Services**

Client shall notify AGILITY immediately, by e-mail to AGILITY Service Desk, if Client becomes aware at any time that the Services are being stolen or used fraudulently. If Client fails to notify AGILITY within one (1) business day after becoming aware of any such theft or fraudulent use of the Services, or if such theft or fraudulent use is attributable to a failure by Client to maintain reasonable physical, electronic or other security measures, then Client shall reimburse AGILITY for any fees or costs incurred as the result of such theft or fraudulent use, including, without limitation, the usage or service fees that would normally be charged by AGILITY or an affected third-party vendor or service provider and/or the replacement cost of any Equipment, products or other items owned by AGILITY or a third-party vendor or service provider that have been lost.

**19.7 Data Backup**

Except in instances in which the Services are agreed in writing to include backup Services, Client shall be solely responsible for backing up Client's data and AGILITY shall have no liability with respect to the loss or unavailability of data. A backup solution must be in place, with backup copies stored off-site. It is the Client's responsibility to ensure that backups are made regularly and to verify the integrity of the backups. IF AGILITY SHALL HAVE AGREED IN WRITING TO PROVIDE BACKUP SERVICES, THEN AGILITY LIABILITY WITH RESPECT TO ANY LOSS OR UNAVAILABILITY OF DATA SHALL BE LIMITED TO ANY ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT AND SHALL NOT EXCEED THE GREATER OF (1) \$2,500, OR (2) THREE (3) TIMES THE MONTHLY FEES PAID BY CLIENT FOR SUCH BACKUP SERVICES.

**19.8 Recovery Services**

Any services to rebuild or recover Client's network, systems or environment following a natural disaster, Cyber-Attack or similar event shall be provided by AGILITY as SOW and/or Project Services.

**19.9 Ownership of Client Data**

As between AGILITY and Client, all Client Data is owned exclusively by Client. AGILITY may access the Client Data to the limited extent necessary to provide the Services or respond to support requests, but shall not otherwise access the Client Data except upon Client's instructions.

**19.10 Compliance Matters**

AGILITY shall not in any instance be deemed to be providing the Client with advice concerning the meaning, interpretation of, or compliance with any laws, regulations or other legal requirements, including, without limitation, Payment Card Industry (PCI) standards, the Sarbanes-Oxley Act (SOX), the Health Insurance Portability and Accountability Act (HIPAA), the European Union General Data Protection Regulation (GDPR) or the New York Department of Financial Security Cybersecurity Requirements for Financial Services Companies. Client agrees that it will not rely upon AGILITY for any such advice and that it will obtain any required advice from its attorneys or other appropriate advisors. Any involvement by AGILITY shall be deemed to be limited to the provision of technological advice with respect to the implementation of solutions or protocols developed by the Client, its attorneys and/or advisors.

**20. INSURANCE**

**20.1 Client Coverage**

Client shall maintain during the term of this MSA agreement commercial general liability and first party cyber liability insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

**20.2 AGILITY Coverage**

AGILITY agrees to maintain during the term of this MSA, professional liability insurance, including technology errors and omissions and cyber incident response coverages, with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

**20.3 Additional Provisions**

Client's insurance shall be primary over AGILITY's insurance. Client agrees to waive, and to require its insurers to waive, any rights of subrogation or recovery they might have against AGILITY, its affiliates, its agents, officers, shareholders, directors and employees.

21. Except to the extent provided in a Service Contract, it is Client's sole responsibility to determine what actions are necessary to make Client's network, systems and environment secure and to take those actions. Without limiting the foregoing, Client has the responsibility to protect its network, systems and environment from, and to train its employees with respect to, viruses, spam, malware, ransomware, the acts of third parties such as hackers and



phishers, and other types of malicious code, unauthorized access or similar threats (collectively "Cyber-Attacks").

22. If a Service Contract for the provision of cyber-security consulting services is entered into, then AGILITY will use commercially reasonable efforts to protect those aspects of Client's network, systems and/or environment that are identified in the Service Contract from Cyber-Attacks, however Client understands that no cyber-security software, devices or procedures can guarantee complete protection against Cyber-Attacks as such attacks are constantly evolving and often involve the intentional action of third parties endeavoring to invade and damage computer systems. The fact that AGILITY may agree to provide, or to provide support for, anti-virus software, firewalls or other products and services related to cyber-security shall not, in itself, be construed as an agreement by AGILITY to provide cyber-security consulting services. IF AGILITY SHALL HAVE AGREED IN WRITING TO PROVIDE CYBER-SECURITY CONSULTING SERVICES, THEN AGILITY LIABILITY WITH RESPECT TO ANY CYBER-ATTACK SHALL BE LIMITED TO ANY ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT AND SHALL NOT EXCEED THE GREATER OF (1) \$2,500, OR (2) THREE (3) TIMES THE MONTHLY FEES PAID BY CLIENT FOR CYBER-SECURITY CONSULTING SERVICES.

**23. NON-DISPARAGEMENT**

During the term of this MSA and for a period of sixty (60) calendar months after termination, Client agrees that they will not disparage or encourage others to disparage AGILITY. Furthermore, Client agrees not to disparage or denigrate AGILITY orally or in writing, and that neither you or anyone acting on your behalf will publish, post, or otherwise release any material in written or electronic format, make speeches, gain interviews, or make public statements that mention AGILITY, it's affiliates, shareholders, directors, officers, operations, other clients, employees, agents, products, or services without the prior written consent of the company.

For purposes of this agreement, the term disparage includes without limitation comments or statements made in any matter or medium about AGILITY which would adversely affect any manner of the conduct of the business of the company, without limitations to the company's business plans or prospect or the business reputation of the company.

**24. INDEPENDENT CONTRACTOR**

Unless otherwise agreed, AGILITY will perform all Services solely in AGILITY's capacity as an independent contractor and not as an employee, agent or representative of Client.

**25. GOVERNING LAW**

This agreement shall be governed exclusively by the laws of the State of Illinois. In the event that any portion of this agreement is held invalid by a court of competent jurisdiction, the remaining portions of this agreement shall remain in full force and effect. Both parties agree to submit to the exclusive jurisdiction of the Courts of the State of Illinois for any action arising related to this Agreement, and Client agrees to reimburse AGILITY for expenses incurred related to any action arising from this Agreement and successfully defended by AGILITY.

**26. WAIVER**

No delay in exercising, no course of dealing with respect to, and no partial exercise of, any right or remedy hereunder will constitute a waiver of any right or remedy, or future exercise thereof.

**27. SEVERABILITY**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such term or provision shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and the agreements of the Parties.

**28. SURVIVAL**

The duties and obligations of the parties with respect to proprietary rights, intellectual property rights, and non-disclosure and confidentiality will survive and remain in effect, notwithstanding the termination or expiration of this MSA.

**29. ASSIGNMENT**

CLIENT MAY NOT ASSIGN ANY RIGHT OR DELEGATE ANY OBLIGATION UNDER THIS AGREEMENT WITHOUT AGILITY'S PRIOR WRITTEN CONSENT, WHICH WILL BE NOT UNREASONABLY WITHHELD. CLIENT MAY WITHOUT CONSENT, ASSIGN THIS AGREEMENT AND/OR DELEGATE OBLIGATIONS HEREIN TO THE SUCCESSOR TO CLIENT BY MERGER, ACQUISITION, OR CONSOLIDATION.

**30. ENTIRE AGREEMENT**

This Agreement and all documents referenced herein, including all Quotes, SOW(s), Purchase Orders, and Service Attachments constitute the entire Agreement and understanding between AGILITY and Client and supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral. No change, modification or waiver of any of the terms of this Agreement shall be binding unless made in writing and signed by both parties.



**31. NOTICES**

All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly made and received when personally served, emailed, delivered by facsimile with a confirmation report, or when mailed by overnight delivery service, or certified mail, postage prepaid, return receipt requested, to the addresses indicated below. The parties may change the addresses on thirty (30) days' written notice.

Contacts for Notices:

**AGILITY MANAGED SERVICES INC.,**  
Attn: Contracts Manager  
1209 S 4<sup>th</sup> Street  
Springfield, Illinois 62703  
legal.[notices@agcomtech.com](mailto:legal.notices@agcomtech.com)

**CLIENT**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**AGREEMENT ACCEPTANCE**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and represent that the persons whose signatures appear below are duly authorized to execute this Agreement.

**AGILITY MANAGED SERVICES, INC.**

\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Print Name  
  
\_\_\_\_\_  
Title  
  
\_\_\_\_\_  
Date

\_\_\_\_\_  
**Client Name**  
  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Print Name  
  
\_\_\_\_\_  
Title  
  
\_\_\_\_\_  
Date